1941. **File No.** O Stamps/41

Legal DEPARTMENT
A BRANCH

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Subject:— Opinions under the Indian Stamp Act, 1899

P 86 E

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MMR. 18/4

No. 439.

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 17th January, 41.

From

P. N. Moos, Esquire, I. C. S.,

Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,

Bombay.

Subject:- Re: Mortgage dated 9th October, 1940

Jalbhai Phirozshah Murzban

to

Bachamai Kharshedji Mowdavala and anr.

And

Re: Mortgage dated 11th October, 1940.

Pirojshah Dhanjishaw Daruldiamalla,

To

Bai Tarabai widow of Maneklal Girdharlal Shah.

Sir,

With reference to your letter No. 7352/S dated the 4th November 1940, on the above subject, I have the honour to observe as follows:-

When possession of the property or any part of the property comprised in the mortgage deed is given by the mortgagor or agreed to be given the deed will fall under Article 40(a) in Schedule I to the Indian Stamp Act, 1899;

The Explanation to Article 40 says that a mortgagor who gives to the mortgagee a power of attorney to collect rents or lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article. The mortgage deed dated the 9th day of October 1940 executed between Jalbhai Phirozshah Murzban and Bachamai Kharshedji Mowdavala and another provided for an assignment of the mortgagor's life interest to 1/6th share in the property and securities described

in the schedule to the mortgagees subject to the proviso for redemption. Possession has not been specifically given under the deed to the mortgagees. Power to demand and to receive interest income and rents of the mortgaged property from the official trustees and to appropriate the same towards interest and principal thereunder has, however, been given by the deed to the mortgagees. It is therefore clear that the mortgagees are given all the powers of a mortgagee with possession. Consequently possession is deemed to have been given to the mortgagees within the meaning of Article 40(a) read with the explanation. The Advocate General's opinion No. 2 of 1911 dated 20th January 1911 clearly applies and the deed will be liable to a stamp duty under Article 40(a) and is not separately chargeable to duty for the power given to the mortgagees to demand andto receive interest, income and rents from the official trustees as such power is implied in mortgages with possession. Unlike the case discussed by the Solicitor in 1927, in the document under consideration the power to demand and receive rents etc. at p. 5 of the deed comes into operation immediately and is not to come into operation at some future date on the happening of some contingency. That opinion therefore does not apply to this case.

2. The second document provides for a mortgage of the mortgagor's Provident Fund amounting to Rs. 18,000/- in the Bombay Dyeing and Manufacturing Company, Limited, subject to the proviso for redemption on payment of the loan. Further it provides for the appointment with immediate effect of the mortgagor's attorney jointly and severally for the purpose of recovering the Provident Fund amount and to file suits for the purpose. It also gives power to them

It also gives power to the mortgagees to apply such moneys in or towards satisfaction of all and singular the moneys for the time being due and owing on the security of these presents and to pay the surplus if any of said moneys unto the mortgagor. It is clear from these provisions that this also is amortgage with possession of an actionable claim within the meaning of Article 40(a) read with the Explanation and is not liable to any separate duty for the power of attorney given to the mortgagees.

3. The documents received with your letter under reference are returned herewith.

I have the honour to be,.

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MRR.
20/4

Office of the R. L. A.

There is no legal objection to commencing or further proceeding with the proposed prosecutions. As regards the instititution of any prosecutions under the Indian Stamp Act, 1899)Act II of 1899) and the ~~xxx xx~~ authorities competent to grant sanction to such prosecutions, attention is invited to section 70 of the Indian Stamp Act and to the notes recorded by the Remembrancer of Legal Affairs dated 30th August 1939 and 13th September 1939 in connection with the prosecutions for evasion of stamp duty on contract notes in Bombay City (F. D File No. 2902-Confl.). In the present case also the contract notes at pages 3 to 25 ante appear to have been executed before the coming into force of the Bombay Finance (Amendment)Act, 1938 (Bom. VII of 1938). It will be form the administrative department to decided whether prosecutions should be launched or not and whether the relevant offences should or should not be compounded. On these questions the Remembrancer of Legal Affairs hasno remarks to make.

sd/-

Remembrancer of Legal ~~Affairs~~ x Affairs.

U. R. to R. D. No. 43 confl. dated the 28th January, 1941.

MRR.
20/4

Submitted with reference to R. D. noted dated 12th December 1940 at p. 93 ante.

2. These papers relate to the question of valuation of shares in instruments of partition for the purposes of the levy of stamp duty. In his letter dated 20th February 1940 at p. 67 ante the Inspector General of Registration states that there is a conflict in R. L. A's opinion No. 2751 dated 19th May 1933 and R. L. A.'s opinion No. 5505 dated 18th October 1934 in as much as in the opinion of 1933 the R. L. A. held that encumbrances should not be deducted from the property for determining the shares on partition and in the opinion of 1934 the R. L. A. held that encumbrances and liabilities incurred for the common benefit of the joint property or charged on the common property should be deducted. The Inspector General therefore raised points (a) to (f) at p. 70-71 ante for authoritative opinion thereon. By u. r. No. 4892 dated 13th May 1940 the R. D. was informed that the points raised by the Inspector General are hypothetical and it is inadvisable to express any opinion on such points. It was also suggested to the R. D. that the letter of the Inspector General may be shown to the Superintendent of Stamps, Bombay, for remarks. The remarks made by the Superintendent were shown to the R. L. A. As the R. L. A. had already advised that no expression of opinion is called for regarding hypothetical questions the papers were seen and returned by u. r. No. 6695 dated 24th July 1940

As suggested by the R. L. A. the Inspector General hasnow seen the remarks made by the Superintendent and has offered his own comments thereon at pp.85-89 ante. When the Inspector General's comments were shown to the Suprintendent, the Superintendent suggested there would be no difficulty in submitting copies of actual documents for the opinion of the Remembrancer of Legal Affairs. But the Inspector General has not submitted any copies of documents for the opinion of the R. L. A. It is therefore proposed by R. D. that these papers may be filed after u. r to the R. L. A.

3. The proposal made by the R. D. may be accepted and these papers may be seen and returned.

sd/-
6/1.

A. S. A may be done.

sd/-
7/1

A. L. S. sd/-
24/1/41.

R. L. A. sd/-
27/1

U. S. to R. D. No. 867 dated 30th Jany. 1941.

MAR.
30/4.

No. 105.

Office of the
Remembrancer of Legal Affairs.
Bombay Castle. 8th January , 1941.

From

J. R. Bhurandhar, Esquire, O. B. E.,

Remembrancer of Legal Affairs,

To

The Superintendent of Stamps,

BOMBAY.

Subject:- Three documents purporting to be Agreements.

Sir,

With reference to your letter No. 6815/S dated 8th October 1940 on the above subject, I have the honour to observe as follows:-

The first document is an instrument between Messrs. Trioumdas Chakubhai, Laxmidas Trioumdas, Haridas Chakubhai and Mathrumdas Haridas and records a declaration by them that they had determined their status asmembers of a joint and undivided Hindu family on 12th October 1935, that since then they hold the immoveable properties described in the Schedules to the deed as Tenants-in-common, that since that date each one of them hasbeen entitled to one-fourth equal undivided share in the property as an absolute owner thereof and for his own absolute use and benefit. Under section 2(15) of the Indian Stamp Act an "instrument of partition ~~means any instrument~~ means any instrument whereby co-owners of any property divide or agree to divide such property in severalty. In order to attract the operation of article 45 in the First Schedule to the Act the ~~instrument~~ instrument itself must be one which effects or records an agreement to effect partition. The deed inquestion does not appear to effect a partition. It refers to a partition which has already taken place on 12th October 1935 and declares that the property is held by the parties as tenants-in-common. An Acknowledgment of partition is an admission that there has been a partition

in the past; it does not effect a partition and istherefore not an instrument of partition (Salharam V Krishnaji vs. Mdm Madan Krishnaji, I. L. R. 5,Bom. 232; I. L. R. 8 Madras 395 etc.) In this connection I am to invite your attention to paragraph 4 of my opinion No. 7543, dated 23rd August 1940. The fact that allthe parties to the partition are alive and join in recording the present acknowledgment of partition does not effect the nature of the document and this case is therefore distinguishable from that in my opinion No. 7543. The view taken by you that the document is a partion deed chargeable to stamp duty under Article 45 is not correct.

2. The Second document is one between Messrs. B. J. Dubash, S. J. Dubash and K. J. Dubash. It recites that these parties along with one Pestonji Jo. Dubash are the owners of the property described in the Schedule, the various shares in which are described, that the said Pestonji Dubash has withdrawn the whole of his share and the others have agreed to continue the managment of premises. The instrument further lays down that (1) all past accounts upto 31st December 1939 in respect of the property have been settled by the parties, that there is nothing due in respect of them and that the agreement operates as a mutual release; (2) that from the income out of the premises the payments mentioned in clause (3) shallbe made to the first three persons; and that(3) as provided in clauses 6 and 8 out of the balance remaining three-fourths shall be paid to the Mortgagee and the remaining kept as areserve fund to be accumulated from year to year. It does not appear from the document that it is an instrument whereby co-owners divide or agree to divide any property in severalty. The instrument itself recites that the property was held indefinite shares and the object of executing the documentin question was the withdrawal of the share by one of the co-owners. The document therefore does not fall under Article 45 of Schedule I to the Indian Stamp Act.

3. It appears that Mr. Pestonji Dubash has withdrawn his share of 3/4 annas in the property for no consideration. It amounts to a gift of his share to the other three co-owners. Consequently in respect of this matter the document would be chargeable to stamp duty under Article 33.

4. The document falls also under Article 55(b) in so far as it provides for a mutual release between the parties of all past accounts up to 31st December 1939 and all actions, claims and demands whatever in respect thereof.

5. The rest of the provisions in the deed relating to sharing the income of the property, applying the balance towards certain payment and keeping the rest as a reserve fund amount to an agreement and the document will be chargeable in this respect under Article 5 2 (e).

6. The third document provides for the following :-

(a) The parties agree that the property at Versova subject to the charge of the maintenance of Bai Sakinabai and of the maintenance and marriage expenses of her unmarried daughter Noorbanoo belongs inequal shares to Kassamally, to the heirs of Husseinally and to the heirs of Hasanally.

(b) The share ofKassamally should be given to hism minor son Akbarally and to his daughter Rehmatbhan without prejudice to their rights to challenge the incumbrances on the Versova property.

(c) Kassamally has agreed that if and when the match factory at Jogeshwari is sold by him, after paying thereout the existing mortgage of Rs. 10,000 he would give an equal share in the surplus to the children of Husseinally inequal proportion that the share of Akbar is double of Malkesultan.

(d) It is agreed that in all dealings between Kassamally and any third party the said Kassamally should be deemed to be the absolute owner of the said factory at Jogeshwari.

(e) Jainabai should be paid Rs. 300 towards arrears of maintenance and a further sum of Rs. 12-8-0 every month which should be charged on the surplus sale proceeds in thesame as share of Kassamally in match factory at Jogeshwari and in the surplus sale proceeds in the Vile Parle property which

which is subject to a mortgage incumbrance of Rs. 15,000.

(f) Kassamally undertakes to arrange to send Akbarally for educations in some respectable Khoja orphanage and will pay for the maintenance and education of Maleksultan and akbar and if the income from the property given to the said minors is insufficient he shall pay the deficiency from his own pocket without any right to reimburse the same.

(g) All the previous accounts between the parties are deemed to have been duly adjusted and in future Kassamally should keep proper accounts of his management of the said immovable properties and of the sale proceeds of the match factory at Jogeshwari.

7. In respect of (a) the document would be liable to a stamp duty as an instrument of partition under Article 45 as it amounts to an agreement to divide the property in severalty; but while assessingthe shares ~~of~~ for purposes of stamp duty the capitalised value the maintenance charge thereon and the value of marriage expenses charged should be deducted.

8. The provision in respect of (b), (c), (d), (f) and (g) amount to an agreement and the document would be liable to a stamp duty under Article 5(c) in respect of each. The provision for (e) does not amount to ~~an~~ a settlement as defined in section 2(24). The document will have therefore to be stamped under Article 15 as as bond on the capitalised value under section 25.

9. The documents received from you are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MRR.

20/4.

No. 177/S

From

The Superintendent of Stamps,
B O M B A Y.

To

The Remembrancer of Legal Affairs,

B O M B A Y.

General Stamp Office,
Bombay, 11th Jan. 1941.

Sir,

I have the honour to refer you to paragraph 3 of your letter No. 165 dated 8th Instant and to return herewith the document and to state that it is not understood how the document hasbeen held to be a gift as regards the share of Pestonji Dubash. A gift is a transfer of property made voluntarily and without consideration by one person called the Donor to mother person called the Donee. Mr. P. Dubash is not a party to this document and he is not to sign it. There is no transfer by him of his share in the property. I donot think that this document can be regarded as a gift. The transaction can be binding on the parties signing the document. The statement on page 2 "and whereas Mr. Pestonji Jamshedji Dubash has withdrawn thewhole of his share" is a mere recital by the other co-owners and it isnot bindding on P. J. Dubash unless he is a prty to the document and unless he signs it. He is not prevented from claiming that there has been no gift nor is he estopped from contesting this recital. There is no transfer by this document of his share. I, therefore, request you to reconsider your opinion so far as it relates to the Gift. The document has been under consideration for a long time and the parties are pressing for early adjudication. A very early reply is requested.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-
Superintendent of Stamps, Bihar.

MRS. 20/4

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 20th January, 1941.

From

P. N. Moos, Esquire, I. C. S.,

Rememmbrancer of Legal Affairs;

To

The Superintendant of Stamps, Bombay.

Subject:- Document by B. J. Dubash and others.

Sir,

With reference to your letter No. 177/S, dated the 11th January 1941, on the above subject, I have the honour to state that in the circumstances stated in your letter I agree with you that the instrument is not a deed of gift in respect of the recital relating to the withdrawal of the share of Pestonji Dubash and the earlier opinion may be taken to have been modified to this extent.

2. The document received from you is returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MRR.
20/4.

Statement of the Case.

The question for consideration is how the two documents forwarded by the Superintendent of Stamps would be liable to stamp duty.

2. The first document recites that Messrs. Ramchandra Narayan Vilnkar and V. N. Velinkar (called the "Mortgagors") had by amortgage deed dated 29th March, 1934, mortgaged the property described in the Schedule to one Dahyabhai Chhaganlal and others (called the "Transferors") in consideration of a sum of Rs. 76,000/- received by them. A sum of Rs. 56,000. It is now agreed that one Bai Jemabai and another (called the "Transferees") should, at the request of the Mortgagors pay a sum of Rs. 71,000 to the Transferors and advance a further sum of Rs. 1000/- to the Mortgagors on the security of the described property. As a result, the Transferors, at the request of the Mortgagors assign unto the Transferee their right title interest claim and demand to and in the said mortgage deed. In the end of the Mortgagors declare the receipt from the transferees of a sum of Rs. 1000 "which with the sum of Rs. 71,000 paid by the Transferees, at their request, and on their behalf, to the Transferors, makes the sum of Rs. 72,000 being the full consideration." of the deed. Relying upon the opinion of the Advocate General No. 4 dated 12th January 1935, the Superintendent of Stamps has held the document to be aTransfer of Mortgage and a fresh mortgage for the total amount of Rs. 72,000/- as the two sums of Rs. 71000/- and Rs. 1000/- advanced to the Mortgagors have been consolidated and have been termed "principal sum." Messrs. Surveyor and Co. for the reasons stated in their letter dated 6th November 1940 contend that the document is chargeable only as a transfer of mortgage, furher charge.

and agreement.

3. The facts of the second document forwarded by the Superintendent of Stamps appear to be similar. That document first recites that by mortgage-deed dated 9th November 1933 one Sonabai and others(called the"Mortgagors") had mortgaged the property described in the Schedule to Messrs. Himatlal & co. (called the "Mortgagees") to secure the repayment of a sum of Rs. 4500 received from the latter. A furtherem sum of Rs. 3000 was advanced by the Mortgagees on the same security. The total amount payable now is R . 19000. One Manilal Keshavlal Desai and others have now agreed, at the request of the Mortgagees, to pay that sum to Messrs. Himatlal & co. (in this document called the Transferors); and have further agreed to pay a sum of Rs. 2000 to the Mortgagers. The Transferors have also transferred their right title and interest in the original mortgage to the Transferees. The Mortgagors have also assigned their rights in the property to securing the adv nce.

4. The question is whether the two documents would be chargeabl under articles 40 and 62(c) in the 1st Schedule to the stamp Act, or under article 62(c) in respect of transfer of the interest secured by the first or original mortgages, under article 32 for the fresh advance and also under article 5(c) for the agreement to pay the whole amount as provided in them. Section 101 of the Transfer of Property Act as amended by Act XX of 1929 inter alia provides that any transferee from a mortgagee or charge holder may purchase or acquire the rights in the property of the mortgagor or owner as the case may be, without thereby causing the mortgage or charg to be merged as between himself and any subsequent mortgagee of a person having a sub-sequent charge upon, the same property.

Under the old section merger was the rule, but the section as amended makes it theexception(see 8 Luck, 103 cited in Mulla's Transfer of Property Act,1930 Edition, Page 555.) In bothm the deeds the amounts due under the mortgages are clearly stated and provision has been made for ayment to the first mortgagee (i. e. transferee). It is true that the mortgagors agree to pay the whole amount including thexfresh advance to the new mortgagee i. e. the transferee. But that does not per se appear to involve any merger of the rights under the first mortgage.

5. As the question involved is of considerations importance and likely to crop up frequently, the Advocate General is requested kindly to express his opinion in the matter.

sd/-

Remembrancer of Legal Affairs.

U. O. to the Advocate General, No.723, dated the 24th Jan., 41.

kkk.

20/4.

I think both the documents should be regarded as transfers of the interest secured by the first mortgages under Article 62(c/ Further Charges for the Fresh amounts advanced under Article 32 and Agreements to pay the whole amount under Article 5(c/

2. In order to ascertain whether a deed is a mortgage deed or a transfer of mortgage, what has to be looked at is the substance of the transaction. See 51 Cal. 135 at pp 195-196 and the ~~Eng~~ English cases referred to there. The matter, therefore, has to be decided by a reference to the true construction of the document. Reading the documents as a whole, there is no doubt left in one's mind that the substance of the transaction ineach case is the transfer of the amount du under the first mortgage coupled with a Further Charge in respect of the ~~amount~~ amount of the fresh advance. The fact that the words "principal amount" are used and the Mortgagor signs a receipt in respect of the whole amount as if it were a consolidated amount cannot, I think, affect the substance of the transaction.

3. The ~~Engish~~ English section is different from our section. There the same section would appear to deal with both classes of documents, different rates of duty being provided for mortgage deeds and transfers of mortgage. However the English Forms both in Butterworth and Prideaux are important as showing the standard from used when effecting a transfer of mortgage with a further advance to the borrower. These forms reinforce the view that I have taken.

4. The document in respect of which the Opinion of the Advocate General dated the 12-th~~of~~ January 1925 has been given seems tobe very similar to the document dated the 20th of September 1940 inquestion. The documents in 25 Bom. 370 and 1 B. L. R. 7, the two cases referrred to inthat Opinion, were documents which could not raise the present question in as much as, there was inthose cases no question of a transfer of the mortgage to a third person. In both these cases the transaction was a fresh advance by the mortgagee to the mortgagor and a fresh document between the morgagees and the mortgagor, no third person being

concerned. The question in each case was whether having regard to the terms of the document, theintention of the parties was to extinguish the first mortgage or keep it alive and have a Further Charge in respect of the Additional amount involved. I do not think that these cases helps the determination of the present question. I would, therefore, take the view mentioned in para, 1, notwithstanding that Opinion.

sd/-

Advocate General.

31/1/41.

R. L. A's letter to the Supdt of stamps Bombay No. 992, dated 3-2-1941.

MRR.
20/4.

R.I. No. 947.
28/1/41.

Submitted.

Please see letter from the Superintendent of stamps, Bombay, at pp. 1-4 ante. It is proposed that Messrs. Maitland Heriot and Co. and their Bombay Representatives should be prosecuted under section 66 of the Indian Stamp Act, 1899, in respect of certain unstamped ~~xx~~ policies of Insurance issued by them. The question whether prosecution under section 66 will lie in this case has been considered by office when the Superintendent had referred the same for opinion in November last (vide office note dated3-12-1940 at pp. 205-207 of L. D. File O. Stamps/40-II) The Superintendent has since forwarded a third cover note dated 14-11-1939 addressed to Messrs. Jivraj Jethanbhai & Co. The cover note appears to be exempted from stamp duty under the General Exemption below article 47 in the First Schedule to the Stamp Act, and if Messrs. Maitland Heriot & co. have failed to make out a policy within a period of one month, a prosecutionxx can lie under section 66 (a) of the Act.

2. The next question raised inthe R. D. office note at p. 11 ante is whether the offences can be compounded, can be answered in the affirmative. The view expressed by the Superintendent of Stamps in para 2 of his letter that under subsection (2) of section 70 of the Act he is competent to compound the offences appears to be correct.

sd/31/1/41.

The proposal to prosecute Messrs. Maitland & co. for issuing unstamped Assurance ~~xx~~ policies or for failure to issue properly stamped policies within the prescribed time from the date of issue of unstamped cover notes appears to be legally feasible section 70(2) gives

ample powers to the Suptd of stamps for compounding such offences

The reply may be on the lines of the Deshmukh's previous note and the present note.

sd/-
3/2

AIR

Since these papers relate to prosecutions under the Indian Stamp Act, which if and when instituted will have to be conducted by the P. P. under L. C. R. 20[illegible] (L) it seems desirable to obtain his views on the questions involved in the reference from the Supdt. of Stamps. The papers may therefore be forwarded in the first instance, to the P. P. Bombay for his remarks.

sd/-
3/2/41.

D. S.

It is not necessary to consult the P. P.

2. Please see para 9 at supdt's letter at page 3 and R. D. Not at Page 11.

Reply may be that there is no legal objection to following the cause suggested by the Supdt of Stamps of his letter dated 4/6/41.

sd/-
3/2

MRR.
20/4.

Office of the R. L. A.

There is no legal objection to following the course suggested by the Superintendent of Stamps in paragraph 9 of his letter dated the 4th January 1941.

sd/-
Remembrancer of Legal Affairs.

U. R. to R. D. No. 1107, dated the 5th February, 1941.

MRR.
20/4.

No. 2117.

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 10th March, 1941.

From

P. N. Moos, Esquire, I. C. S.,

Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,

Bombay.

Subject:- Agreement with Messrs. Mangilall Rungta and others.

Sir,

With reference to your letter No. 260/3, dated the 16th January 1941, on the above subject, I have the honour to observe as follows:-

1. It is not doubt true that the instrument in the present case has not yet become chargeable to stamp duty being not executed by both the parties; but for purposes of adjudication to proper stamp duty under section 31 of the Indian Stamp Act, 1899 it is not necessary that the instrument should have been duly executed (see the words "executed or not" in section 31.) All that you have to see for purposes of adjudication is whether the instrument brought to you falls under any of the Articles in Schedule I to the Stamp Act so that it would be chargeable to stamp duty; and this is apart from the acual levy of the stamp duty which can be done only in respect of an executed instrument which is not duly stamped. Consequently the fact that the instrument in the present case has not been executed by the other party would not preventx you from adjudicating under section 31. Since the instrument falls under Article 5 and Article 40(a) (see R. L. A.'s opinion No. 2414, dated 25th March 1939) it is not open to you to certify that the instrument is not chargeable to stamp

duty under section 32(2). Consequently you should in the first place adjudicate under section 31 the stamp duty leviable on the instrument and if the company pays it, certify it under section 32(1); otherwise you should return the instrument to the company since you cannot impound the instrument which not being yet executed cannot, until its execution be said to be 'not duly stamped' within the meaning of section 33. Section 19-A will come into play only when the instrument is brought into this province after it is duly executed.

2. The document ~~xxxxx~~ received from you is returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MM.

20/4.

Office of the R. L. A.

The practice followed by the Executive Health Officer does not appear to be correct for in determining the amount acknowledged to have been received by the payee it is not right to make any allowance for an entirely independent transaction viz. the authorised deduction which can be made only out of the gross amount paid. Since as between the employer Municipality and the employee the receipt will be fore the full pay. i. e. including the amount recovered from the employee from his pay onbehalf of the Co-operative Credit Society, the liability for stamp must be determined with reference to the gross pay and not with reference to the net amount actually paid after making any authorised deduction for the benefit of a co-operative Credit Society. For similar reasons a stamped receipt should be demanded from an employee even though the net amount payable as per column 15 in T. O. Form 6 does not exceed Rs. 20 after deductions on account of co-operative Credit Societies' de from the salary provided of course that ch deduction exceeds Rs. 20.

sd/-

Remembrancer of Legal Affairs.

U. R . to the R. O. No. 2279 dated the 14 th March, 1941.

MRR.
20/4.

Submitted.

2. In his opinion No. 2279, dated the 14th March 1941, the H. L. A. held that the liability for stamp must be determined with reference to the gross pay and not with reference to the net amount actually paid after making any authorised deduction for the benefit of a co-operative society.

3. The Examiner, Local Fund Accounts, Bombay, enquires whether the liability for stamp duty must be determined with reference to the gross and not the net pay, only in cases where the deductions on account of co-operative societies' loan recoveries are concerned or even in cases where other authorised deductions like G. P. Fund, Postal Insurance and Income-tax are made from the pay bills.

4. Since the liability for stamp must be determined with reference to the gross pay and not with reference to the net amount actually paid, it follows that even incases of authorised deductions like G. P. F. P. I. and I. T. the liability of stamp must be determined with reference to the gross pay. Since the receipt of the pay even in the above case, willbe made for the full pay(including the amount recovered from the employee from his pay in respect of the G. P. Fund. P. I. I. T. etc.) the liability for must be determined with reference to the full pay and not with reference to the net amount actually paid after making any authorised deductions like G. P. Fund P. I. and Income-tax.

The presumption made in the R. D. Office note dated 4/10/41 is correct.

sd/-
18/10/41.

S. A. S. Fl out up R R A's file

sd/- 22/10.

Submitted

R. L. A's file underlying his opinion No. 2279 dated 14/3/41 is out up with Mr. Deshmukh case. It is not yet available It may be awaited.

sd/-
27/10

SAS sd/-
27/1

Submitted with papers underlying R. L. A's opinion No. 2279 dated 14/3/41.

sd/-
3/11/41.

A. S. Norly may be an at A

sd/-
3/11

A L R
sd/
3/11/41.

R. L. A. sd/-
4/11

R. L. A's Office.

The presumption made in the R. D. office note dated 4/10/41 is correct.

sd/-
R. L. A.

U. R. To R. D. No. 0614 dated 7/11/41.

submitted after issue with an index card for approval.

sd/- 3/11

A. S. sd/-
10/11

Submitted for signature.

A. S. sd/-
5/11

A. L. R. sd/-
6/11/41

D. R. sd/-
6/11

R. L. A.

AMR.
20/4/56.

No. 1392/S

From

The Superintendent of Stamps,
Bombay

To. The Remembrancer of Legal Affairs,
Bombay.

General Stamp Office,
Bombay , 4th March, 1941.

Re:- A deed of gift ~~in~~ by way of Hiba.

Sir,

I have thehonour to forward herewith a document received from Messrs. Vachha and Co. Solicitors, Bombay for adjudication of stamp duty payable thereon and to request that you will be so good as to favour me with your opinion as to whether the document is a simple declaration or a Deed of Gift.

2. By the document under adjudication one Fatmabai widow of Haji Tayeb Noorani~~m~~ solemnly declares that on 24th January 1941 she made a gift by way of Hiba of the Salt pans described in the Schedule to the document to her daughter Halimabai and her son-in-law as joint tenants by delivering to them possession of the property and alltitle deeds relating thereto and that Halimabai and her husband have accepted the gift of the immovable property and have taken possession thereof. By clause 3 she further declares that she made the declaration of her own free will and pleasure in proff of Hiba of the said immoveable property to her daughter Halimabai and her son-in-law, andthat she got the tenant- of the property on 24-1-41. As the property has been ~~transferred~~ transferred inter ~~vi~~vivos voluntarily and without consideration and the gift has been accepted I held the document executed next day to record the fact of the transfer to be a gift chargeable with a duty under Art. 33 of the Schedule to the Indain Stamp Act. The Solicitors however do not agree and contend for reasons mentioned in their letter(copy enclosed) that the document is not agift but amere declaration requiring a stamp of Rs. 2/- only.

2. I request that you will be so good as to favour me with your opinion whether the document is a gift or a more declaration.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

For Superintendent of Stamps.

MRr.

20/4.

Copy of letter Dated 30th January 1941 from Messrs. Vachha & Co., Solicitors, Bombay.

Re:- 2 Declarations proving Gift (Hiba).

"We have the honour to inform you that our client Bai Fatmabai widow of Haji Tyeb Noorani made gift by way of Hiba of two immovable properties to her daughter and son-in-law. The Hiba is special procedure of gift under Mahomedan Law and under section 25 of the Mahomedon Law writing is not essential to the validity of agift either of movable or immovable property. Section 125(b) says that it is essential to the validity of the gift there there should be a declaration of gift by the Donor and acceptance of the gift by the donee and giving of possession of the property by the Donar to the Donee. By the Declaration it is only stated that the Donar has already made a gift of the property to the Donees by giving possession and the Donees have accepted the same. The property is not gifted or transfered by the Declaration itself.

We now send herewith the 2 Declarations both dated 25th January 1941 made by our client and we we have to request you to certify that proper stamp duty hasbeen paid.

MRR.
20/4.

No. 3200.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 9th April, 1941.

From

P. N. Moos Esquire, I. C. S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
Bombay

Subject:- A deed of gift by way of Hiba.

Sir,

With reference to your letter No. 13921/S, dated the 4th March 1941, on the above subject, I have the honour to state that I am of opinion that the instrument in question is not a deed of gift. It only records a transaction of gift that that already taken place.

2. Thedocument received with your letter under reference is returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,
sd/-
Remembrancer of Legal Affairs.

MRR.
21/4.

R. I. No. 2738 dated 22/3/41.

Submitted.

Attention is invited to R. L. A's opinion No. 5993 dated 2-7-1940 in which the R. L. A. had advised that under the Bombay Stamp Rules, 1939, the duty on agreements falling under article 5(c) in Schedule I to the Indian Stamp Act 1899, shouldbe paid by means of general duty stamps issued by Government for the purposes of the Act.
That opinion was given with refer nce to agreements entered into by subsidised medical practitioners with Government which the R. L. A. in his opinion No. 6305 dated 14-12-1937 had held to be chargeable under article 5(c) in the First Schedule to the Act. The Surgeon-General with the Government of Bombay now states in his letter at p. 1 ante that some of those agreements bear special adhesive stamps of the value of Re. 1/- insread of the general duty stamps. The Superintendent of Stamps appears to have advised him that the documents bearing the adhesive stamps can be said to be duly stamped provided they bear the proper amount of stamp duty. The question for the consideration of the R. L. A. is whether the view expressed by the Superintendent of Stamps that the Agreement in question can be stamped is correct.

2. Under sub-rule(1) of rule 3 of the Bombay Stamp Rules, 1939, except as otherwise provided by the Act or by those rules, all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated

on such instrument, by means of stamps issued by the Provincial Government for the purposes of the Act. There are two kinds of stamps-impressed and adhesive. ChapterII deals with the former and Chapter III with the latter kind of stamps. Under rule 10(II) labels may be affixed and impressed by the proper officer (i. E. inter alia the Superintendent of Stamps) in the case of instruments specified in App. III when written in any European Language. Item 1 in that App. refers to agreements which in the opinion of the proper officer, cannot conveniently be written onsheets of paper on which the stamps are engrossed or embossed. It appears that the form of agreements to be entered into by the subsidised medical practitioners hasbeen printed and it is not convenient to get such agreements executed on sheets of paper on which the stamps are engraved or embossed. For this reason it appears that duty on such instruments will have to be denoted by the Superintendent of Stamps affixing and impressing the labels under rule 10(ii) of the Bombay Stamp Rules, 1939 read with item 1 in App. III. The view expressed by the Supdt of Stamps in his letter at p. 3 ante that such agreements can also be properly stamped with special adhesive stamps does not appear to be correct. Rule 19 mentions the various classes of instruments duty on which isrequired to be denoted by means of special adhesive stamps. The agreements under consideration are not covered by any of the items in that rule.

3. The agreements in question bearing the special adhesive stamps are not therefore pro erly stamped; and under rule 20 of the Bombay Stamps Rules it is open to the Collector, on payment of the due duty, to certify by endorsement that the document is dully stamped.

A. S.

Rule 3(2) of the Bombay Stamp Rules, 1939 provides that there shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely, (a) impressed stamps and (b) adhesive stamps. Chapter II deals with impressed stamps while Chapter III with adhesive stamps. Rule 6 in Chapter II says that every instrument, other than the instruments specified in rules 4 and 5, chargeable with duty shall, except as provided by Sec. 11 or rules 10, 12, and 13 be written on paper on which a stamp of the proper value not bearing the word 'hundi" has been engraved or embossed.

The agreements executed by the subsidised medical practitioners liable to astamp duty under Art. 5(c) of Sch. I to the Indian Stamp Act do not fall under sec. 11 or rule 12 or 13 (Chapter III). Rule 10(11) provides that labels may be affixed and impressed by the proper officer in the case of the instruments specified in App. III when written in any European language and accompanied, if the language is not English, by a translaction in English. The proviso to that rule says that the Provl. Govt. may direct that this rule shall apply subject to any conditions which it may prescribe to any of the instruments specified in App. III other than Bills of Exchange, when written in any oriental language.

Agreements executed by the subsidised medical practitioners may fall under item 1 in App. III. Consequently in the absence of compliance with the provisions of rule 10(11) or the provso thereto as the case may be, the agreements will have to be written on impressed stamp papers and not on papers bearing adhesive stamps. If such agreements are written on papers bearing adhesive stamps, they would be considered to be cases in which improper description of stamps is used

under rule 20 and the proper stamp duty shall be recoverable by the Collector. The view expressed by the Supdt. of Stamps at p. 3 ante that adhesive stamps can be used for such instruments does not appear to be correct.

sd/-
26/3

A L R

I am inclined to agree with the note of A. S. above has the sol. any rem rks to make on this case?

sd/-
28/3/41.

Sol

MRR.

20/4

The opinion given by the Superintendent of Stamps is correct.

Special Adhesive stamps are not available for sale to the public. They cannot be affixed by a private party. They are affixed only by a proper officer under rule 10.

In case of Bonds executed by subsidised medical practitioners, the special adhesive stamps must have been affixed by the proper officer under rule 11 and under item 1 of Appendix III.

Such Bonds can also be written on non-Judicial stamp papers but if not, they can be impressed with special adhesive stamps under Rule 11.

R. L. A's opinion No. 5993, dated 2nd July 1940 does not say that stamps on such Bonds is to be paid only by means of general duty stamps It only says that they cannot be stamped with Court Fee stamps. But they may be stamped with special Adhesive stamps under rule 11.

Under Section 2(13) of the Stamps Act, impressed stamp also includes labels affixed and impressed by the proper officer

sd/-
1/4

A. L. R.

I was not aware of 'A' which necessitates a modification in the concluding portion of the note of A. S. dated 26. 3. 41.

It approved, the reply may be as in the above note by the Solicitor.

sd/-
1/4/41.

R. L. A.

Discussed with A. L. R. A. S. and Solicitor.

It seems to me that the agreements in question can be stamped with special adhesive stamp labels provided the provisions of rules 10A 11 of the Bombay Stamp rules 1939 are complied with.

sd/-
4/4

U O R to G. D. No. 3145 dated 7-4-41.

MR
30/4

R. L. A's Office.

Submitted.

In his Opinion No. 6489, dated 20/6/39 the R. L. A. had stated that the definition of bond' in sec. 2(5) of the Indian Stamp Act, 1899, is not exhaustive; that the signification of bond i itself is undefined; that the term 'bond' generally means an instrument whereby one person binds himself to another for the payment of a specified sum of money, either immediately or at a fixed future date; and that there is no provision in the Indian Law requiring attestation in addition to the obliger's signature on the bond. There must be an obliger and obligee and a fixed sum of maney in which the obligee is bound. Relying onthis opinion the R. L. A. in his letter No. 5274 dated 3-6-1940 addressed to the Supdt. of stamps had advised that the document dated 30/4/1940 sent by the Asian Textile Engineering Corporation to Messrs. WEstinghouse Electric Company recording that the dispute between the two comanies which had been rererred to arbitration and settled inter alia on the following conditions :-

(1) That the Asian Textile Engineering Corporation admits that it owes the Westinghouse Electric Co. a sum ofRs. 34,000/- on account of goods sold by the latter; and

(2) That the said sum shallbe paid with interest by 20 monthly instalments of Rs. 1,700/- each, was a bond as defined in sec. 2(5)of the Act. It appears that Messrs. Crawford. Bayley and Co., Solicitors, question the correctness of this

ew and request the Supdt. of Stamps to refer the case to the High Court under Sec. 57. The Supdt. Therefore requests the Advocate General to advise whether attestation is necessary to constitute a bodn and whether thematter is wroth referring to the High Court.

2. The Supdt. of Stamps has also forwarded another document sent by Messrs. Fazalbhai Ltd. It is signed by the guarantor and confirmed by the principal debtor to secure payment of Rs. 10,000/-. Asit is signed by the Principal debtor, the Supdt. has held it to be a bond. The supdt requests the Adv General to state whether confirmation by the principal debtor amounts to an obligationto pay money. This document would presumably be covered by the opinion in the other case.

3. As desired by the Supdt. of stamps the papers may be referred unofficially to the Advocate General who may be requested kindly to advise in the matter.

sd/-
14/2/41.

As A may be done.

sd/-
14/2

A L R sd/-
21/2

R. L. sd/
26/2

U. R. to the Adv. General No, 1869, dated 3rd March 1941.

MRR

20/4

I agree with the view expressed in the opinion of the A. G. A. dated the 20th of June 1939 that the definition of "Bond" in Section 2(5) of the Stamp Act is not exhaustive I further agree with the definition of the term "Bond" set out in paragraph 2 of that Opinion.

2. That definition makes it clear that in order that a ~~xxx~~ document may be a bond, a person, viz; the obligor must bind himself by that document to pay to the obligee a fixed sum of money. Inother words a document can be a bond only if it is one which itself creates an obligation to pay money. See 22 Cal 757 at p 759. It is true that no particular form of words is necessary to create a bond. But the requisite above mentioned viz; that the obligor must by it be bound in a certain sum of money must exist. See 3 Hals. Para 164.

3. I do not think that the letter dated the 30th of April 1940 from The Asian Textile Engineering Corporation to Messrs. Westing House etc, Ltd. is within the definition. That letter records the terms and conditions of a certain agreement which are said to have been settled between the parties inregard to the payment of the sum of Rs. 34,000/- therein mentioned and asks for a confirmation of those terms. By that letter there is no obligation to pay undertaken by the writers of the letter. The fact that this letter is confirmed by those to whom it is addressed will not make any difference.

4. The second document, viz; the letter addressed to Messrs. Fazalbhoy Ltd. dated the 12th of October 1940 comes nearer the definition, in as much as, by it the Royal Film Circuit agree in certainevents to pay the sum of Rs. 10,000/- to Messrs. Fazalbhoy Ltd. But in my opinion this document also would not be a bond.

R. A. A's letter to the Supdt of Stamps.

B'bay, No. 2528, dated 10/3/1941. sd/-

Advocate General.

Mkr.

20.4

No. 3772

ffice of the

Remembrancer of Legal Affairs.

Bombay Castle, 28th April, 1941.

From

P. N. Moos, Esq., I. C.S.,

Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,

BOMBAY.

Re: Mortgage of future moveable property.

.....

Sir,

With reference to your letter No. 1449/S dated the 6th March, 1941, on the above subject, I have thehonour to state the document clearly is a hypothecation of moveable property, present as well as future. The existing moveable property comprised in the document is all tangible property. The future moveable property covered by the document will also be t ngible property when it comes into existence. The view expressed by you that "the future property not being in existence cannot be said to be tangible property" is not therefore correct. The distintions of property into tangible and intangible and present and future are based on ~~if difference~~ different considerations. All existing moveable property necessarily intangible. It depends upon the nature ofthe property. In the present case all the future property covered by the document is obviously tangible. The document therefore if attested is liable to stamp duty as a bill of exchange under item 46 of Revenue Department Notification No. 4298/33 dated 8/1/1941 and is exempt fromstamp duty, if unattested under item 47 of the said Notification.

2. The document received from you is returned herewith.

I have the honour to be

Sir,

Your most obedient Servant

sd/- 25/4. R. L. A.

MRR. 20/4.

No. 4320

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 12th May, 1941.

From

F. N. Moss, Esquire. I. C. S.,

Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,

BOMBAY.

Subject:- Loan bond executed by a member of the G. I. P. Railway Cooperative Bank Ltd.

Sir,

With reference to the correspondence endind with your letter No. 1749/S dated 18th March 1941, on the above subject, I have the honour to observe as follows:-

2. By clause 1 of the document the executant agrees to pay the loan by monthly instalments. That clearly makes it a bond according to the R. L. A's opinion No. 6489 dated 20th June 1939. Messrs Little & Co. contest that view on the ground that the instrument chargeable as a bond under Art. 15 in the First Schedule to the Indian Stamp Act, 1899 should be an instrument as defined in section 2(5). But they overlook that the definition of "Bond" insection 2(5) is an inclusive definition andnot an exhaustive one. Until the courts decided otherwise, the opinion above referred to should be followed.

3. By clause 4 the executant authorises the G. I. P Railway to pay to the Bank at their request monies from time to time towards the loan and to deduct thesame from his salary, allowances or gratuity due to him by the G.I. P. Railway. The question for consideration is whether this amounts to a power of attorney.

4. A power of attorney is defined inx section 2 (21) of the act as including an instrument empowering a specified person to act for and inthe name of the person executing it.

The authority must be "to act for and in the name of the person executing." It cannot be said, in my opinion that these two clauses authorise the Railway to act for and in the name of the borrower. It is said that the payment to be made by the Railway under clause 4 will be onbehalf of and in thename of the borrower. That may or may not be so. But the document in terms does not say that the payment is to be made by the Railway under clause 4 of the Railway company shall on behalf of the borrower and in his name pay to the Bank the amount due by him. In my opinion, therefore, the document does not amount to a power of attorney.

5. The next question for consideration is whether the document amounts to a hypothecation of moveable property. By clause 6 the borrower charges and appropriates to the Bank the pay, allowances and gratuity whichmay hereafter become payable to him by the Railway administration to secure repayment of the loan and incertes. The document on theface of it is an assignment of an actionable claim by way of security. Thefuture salary, allowance or gratuity payavle to him are an actionable calim as defined insection 3 of the Transfer of Property Act, 1882, where an actionable claim is defined, omitting unnecessary woords, to mean"a claim to any debt whether such debt be existent, accruing, conditional or contingent. Mulla's commentary at page 690 of the 2nd Edn. of the Transfer of Property Act makes it clear that future salary or gratuity is an actionable claim. Under section 134 of the Transfer of propertyAct, an actionable claim may be transferred or assigned by way of mortgage. Clause 6 of the document on theface of it is an assignment of an actionable claim. An actionable claim is intangible moveable property and since the assignment is only by way of security and not absolutely\by way of sale, the documentamounts to an hypothecation of intangible moveable property and would ordinarily be liable to stamp duty under Art 40 (b) in the First Schedule to the stamp Act.

There are however two objections. One is that an assignment of future property is not a completed assignment at law but only an agreement to assigne which equity enforces when the property comes into existence. See I. L. R. Madras January, 41, page 61 and 45 cal. Weekly Notes, page 50. The second objection isthat the borrower in this case being in the employ of a State Railway is a public servant and therefore under section 6(f) the salary of a public officer whether before or after it has become payable cannot be transferred and therefore the present hypothecation is invalid in law. The question for consideration is whether while adjudicating stamp duty payable on an instrument you are bound to look to the legal consequences or effect of an instrument and should adjudicate the stamp duty payable thereon accordingly or whether you should adjudicate the stamp duty only according to the apparent tenor of the document , whatever the legal consequences or effects. In the latter case the document is liable to stamp duty under Art. 40(b) irrespective of the validity or invalidity of the assignment. In the former, the document is not liable to stamp duty at all, the assignment being invalid. Inmy opinion duty should be levied only according to the apparent tenor of the document irrespective of its legal effect and if the document on the face of it purports to be a hypothecation of intangible moveable property it must be stamped accordingly. The point however is not free from doubt.

In any event the duty on a bond is the same as the duty on hypothecation of moveable property under Art. 40 (b) and therefore if the document is held to be a bond, as it seems to be in my opinion the stamp duty will be the same irrespective of the fact whether it is held to be a hypothecation of moveable property or not.

The document received from you is returned herewith.

I have the ~~xxxx~~ honour to be,

Sir,

Your most obedient servant,

sd/-

9/5

Remembrancer of Legal ~~Affairs~~ Affairs.

MRR.
20/4.

No. 4608.

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 30th May, 41.

From,

P. N. Moos, Esquire, I. C. S.,

Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,

BOMBAY.

Re: An Indenture varying terms of lease and
2. Deed of variation of covenants in the lease dated 25-11-1937.

Sir,

With reference to your letter No. 1838/3 dated the 24th March 1941, on the above subject, I have the honour to observe as follows:-

The first document under adjudication does not fall under section 4 of the Indian Stamp Act, 1899, as it is not one of a series of documents evidencing asingle transaction. It is not a paper which is to be taken in connection with another paper that has been already stamped, in order to supply what is deficient in that paper. The lease of 1906 evidenced a completed transaction. The present document has been styled as "Indenture varying terms of the lease". The recitals show that the parties have agreed to vary the terms and conditions of the original lease, that the subject matter of the lease shall stand demised unto the lessees at the freshly reciteed rents and for the freshly recites term, that the fresh covenants of the lease are "in supersession of the covenants and conditions" in the original lease of 1906. The varintions are so material that the present document stands as a novation, implying a surrender of the original lease. The document in other words is one of fresh demise, not falling under

section 4 of the stamp Act. Consequently the ruling in Byjnath Dutt vs. Mussamat Putsohee Dobain 20 W. R. 36 applies to this case. The decision in Crwley vs. vitty 7 Ex. 319 S. C. R. R. 86. 664, was not one under the Indian Stamp Act and is moreover inapplicable.

2. The Solicitors contend that the document is not a lease governoned by Article 35 but is an agreement of the nature specified in Article 5(c) The contention that the document does not evidende alease is not correct. All the essential elements of a lease are present inthis case. Clause 1 clearly demises the property, the parties are named, the property described, and the term and the rent specifed. The decision in the matter of Rameshwar Prasad, I. L. R. 47 All. 310 relied on by the Solicitors is distinguishable on facts as referrring to a transaction of mortgage, and to a case of extension thereof but not novation. The view taken by the Superintendent of Stamps that the document now under adjudication is a lease liable to be stamped under Article 35 is correct.

3. The second documentix is an agreement made between the Bombay Port Trust and the Sizing Materials Co.Ltd. It appears that the Port Trust had demised to Company in 1937, certain premises for a period terminating in April 1942, upon certain conditions. By the present agreement the lessees agree to pay an additional rent of Rs. 21for the unexpired period of the lease in consideration of the lessor having paved certain platformsx in the premises demised. The document clearly evidences a transaction different from and supplemental to that of the lease of 1937 and is not exempted from stamp duty under section 4 of the Stamp Act. It is liable to stamp duty under Article 35(a) (iii) but the stamp duty would be ~~ix~~ leviable only on the basis of the rent reserved by this instrument, and not upon that of the total rent payable by the lessee under the original lease as now modified. The three documents received from you are returned herewith. Jana mul - O Select

R. L. A

I have the honour to be,

Sir,

Your most obedient servant,

sd/-
20/5

Remembrancer of Legal Affairs.

MAR.
20/4.

No. 6259.
Office of the
Remembrancer of Legal Affair
Bombay Castle, 17th July, 41.

From

P. N. Moos, Esquire, Bar-at-Law, I. C. S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
BOMBAY.

Subject:- Two letters between landlay and the Trustees of Dr. Bhajekar Memorial Hospital.

Sir,

With reference to your letter No. 4074/S dated the 20th June 1941, on the above subject, I have the honour to state that there is no disposition of property in the present case as Saraswatibai reserves to herself the right to resume possession of the property by giving two months' notice. Therefore, the document is not a Settlement. The two letters together would appear to constitute an agreement withinthe ruling in 3Bom. L. R. 401(Re: Narayandas) which lays down that a document whereby no rent is reserved should be stamped as an Agreement underArticle 5 (c) of Schedule I of the Stamp Act. The question whether the agreement creates a licence or not is not relevant for purposes of stamp. The document may, therefore, be stamped with a stamp of Rupee one under Article 5(c).

The document in question is returned herewith.

I have the honour to be,
Sir,
Your most obedient servant

sd/-
16/7

For Remembrancer of Legal Affairs.

MRR.
20/4.

No.6761 -13

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 31st July, 1941.

From

P. N. Bhos, Esquire, Bar-at-Law, I. C. S.,

Remembrancer of Legal Affairs,

To

The Superintendent of Stamps,

BOMBAY.

Re: Agreement of Dower.

Khan Bahadur Shaikh Jannahomed and

Farida Begum.

Sir,

With reference to your letter No. 4143/3, dated the 24th June 1941, on theabove subject, I have the honour to state that the deed in question provides for three matters, viz., (1) agreement to pay an amount of Rs. 10,000 as dower (clause (1) (2) agreement to pay an annuity of Rs. 500 per month(clause (2)); and (3) an agreement to execute immediately after marriage a trust deed conveying certain landed property (being built upon) to the parties to the deed and Khan Bahadur Sheikh Yakub as trustees thereof to hold the same upon certain trusts inthe nature of marriage settlement as specified in sub-clauses (a) to (f) of clause 4 of the deed.

2. As Regards the agreement to pay dower, it is exempt from payment of stamp duty under Article 56-A(a) in Schedule I to the Indain Stamp Act. As regards the annuity of Rs. 500 per month, the document is a bond and as such it is liable to a stamp duty under Article 15 read with section 25(b) of the Indian Stamp Act. As regards the agreement to execute the trust deed the consideration for it is the promise to marry, as recited in the deed. The document is therefore an agreement to settle property in consideration of marriage and hence a settlement as defined in

section 2(24) of the Stamp Act. It is accordingly leviable to stamp duty under Article 58.

3. The document received with your letter under reference is returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MRR.
20/4.

No. 7253.

Office of the

Remembrancer of Legal Affairs.

Bombay Castle, 18th August, 1941.

From

P. N. Moos, Esquire, Bar-at-Law, I. C. S.,

Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,

BOMBAY.

Re: Agreement dated 27-1-1941.
Khan Bahadur Shaikh Jammahomed and
Farida Begum.

Sir,

With reference to your letter No. 5218/S dated the 8th August 1941, on the above subject, I have the honour to state that the view taken by your therein is correct.
The deed falls under clause (c) and not clause (b) of section 25 of the Stamp Act. My previous opinion on the subject may be taken to have been modified to this extent.

I have the honour to be,

Sir,

Your most obedient servant,

sd/-

Remembrancer of Legal Affairs.

MRR.
20/4.

No. 7569.

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 23th August, 1941.

From

P. N. Ibos, Esquire, Barrister-at-Law, I. C. S.,

Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,

BOMBAY.

With reference to your letter No. 4747/3 dated the 18th July 1941 I have thehonour to state as under:-

Section 58(a) of the Transfer of Property Act defines "mortgage as transfer of an interest in immoveable property for the purpose of securing the payment of money adv nced or to be advanced by way of loan, an existing or future debt or performance of an engagement which may give rise to a pecuniary liability. There are six classes mortgage and described in clauses (b) to (g) of section 58 and one of them is a mortgage by a deposit of title deeds (see clause (f)) which is called in English law an equitable mortgage. An equitable mortgage is created and is complete by the act of deposit of title deeds; nothing else is necessary. It is essentially an oral transaction; consequently no writing is required and registration is out of the question. But if there is a writing, the matter is different and a distinction will have to be made between cases inwhich the writing itself constitutes the bargain between the parties nd cases inwhich the writing is a mere memorandum of the fact of mortgage. In the former case, registration is essential; in the latter registration is unnecessary. There, indetermining whether the writing requires registration or not, it is necessary to consider whether the mortgage is complete independently of it. If the document is merely a written record of the particulars of the deeds deposited it does not require registration; but if on the other hand it is one whichin itself purported or operated to create or declare some

right, title or interest in the property included in the title deeds, or in other words if it is of such a nature that it was treated by the parties as the contract for

the mortgage and to be the only depository and appropriate evidence of the agreement, it would require registration. (See,A.I.R. 1935, Bom. 321, A.I.R. 582 P.C.; see also Adv. General's opinion No. 40 of 1913). Scrutinized in this ligh , the first document under consideration (named by Animbai t V'ghi (wife and mother) discloses the following particulars:-

In the concluding century of the non-operative preliminaries(page 3 of the document) " the mortgagors covenant the mortgagee to lend..... Rs.70,000/- with interest secured to them by deposit of title deeds.... inter alia on the terms and conditions hereinafter mentioned". Thereupon, "It is agreed as follows"Clause 1 of the operative part then begins. "In pursuance of the said agreement". It is thus agreement is mentioned anywhere in the preceding non-operative part and the agreement is clearly the one constituted by the document itself. The first clause then significantly recites "In consideration of the sum of Rs.70,000/- on or before the execution of these presents paid to the mortgagors by the mortgagee the deeds, evidences, and writings comprised in the second schedule .. which the mortgagors have this day deposited with the mortgagee in Bombay shall hereafter/ be held by the mortgagee as suitable security for the payment of the said sum together with interest costs charges expenses and other moneys payable by the mortgagors to the mortgagee as provided by these presents or by law". It is the document a whole and clause 1 and clause 11 in particular which changes the position of the deposites of the title deeds into that of a mortgagee, by creating a charge on

the security.] This is corroborated by various expressions in other clauses.] For instance—

Clause 3: "This security",

"Principal sum and interest and all other moneys hereby secured;"

"Under the terms of or in connection with these presents";

Clause 4: "This security";

payable under these presents".

Clause 5: During the continuance of these presents and the security created

Clause 6: "During the continuance of this security";

Moneys due and owing on the security of these presents";

"Such rights and remedies as would be available under the terms of these presents or by law upon default being made in payment of the principal money and interest secured to the mortgagee".

Clause 7: "Due under these presents";

"~~Extent~~ This security";

"Principal moneys and interest and the moneys owing on the present security

Clause 8: "The equitable security hereby created";

Clause 11: "The mortgagee shall hold the said conveyance then obtain by way of equitable security along with the other title deeds and will be comprised in and form part of the present security hereby contained".

Clause 7: "The Mortgagors' covenant full power and authority to create suitable security in manner hereinbefore expressed";

"during the continuance of this security";

"to more perfectly securing the security hereinbefore expressed to be created".

Clause "Principal sum lent and advanced on the equitable securities aforesaid"

"Trust of sum and interest and all moneys intended to be secured";

"entitled to transfer these securities

2. This document thus forms a contract creating a mortgage security on property and seems to fall under Art 40 of the Stamp Act. Some of the expressions quoted from the document are similar to those appearing in the document to which the ruling in (1937) 2 Cal. 526 related. It is clear that no general rule can be laid down about the scrutiny of various clauses and each document is to be interpreted on its own terms. R.L.A.'s opinion No. 1673 dated 5.11.40 must be taken to have interpreted the terms of the deed then in question and not to lay down any general rules. Where the writing in fact constitutes a contract creating the security along with the deposit of title deeds, then although the time and place are relevant and are matters to be taken into consideration, the precise sequence of events is by no means conclusive and the document will be seen clearly registrable and liable to stamp under Art 40 if it is proved to be 'the only repository and a complete evidence of the bargain between the parties'.

3. As regards the second document under consideration (executed by Dravidans in favour of Bayaji), there seems to be

no doubt whatever that it is a deed of pledge unattested and hence exempt from stamp duty under the exemption under Art.6 of the Stamp Act. A pledge differs from a mortgage in the nature of the interest created in favour of the security-holder and in the remedies open for enforcement of his rights. The pledge constitutes only a "special property" in the security, of the nature of retainer of possession and is enforceable through court or in the alternative by sale on notice out of court under the provisions of sections 172 to 179 of the Contract Act; while a mortgage conveys an interest with or without possession, which can be enforced by sale or otherwise through the court. Clause 4(e) of the document shows that the persons in this case is given the power of sale out of court and the document is a clear pledge.

The documents received with your letter under reference are returned herewith.

I have the honour to be

Sir,

Your most obedient servant,

Sd/-

25/8/

Secretary of Local Affairs.

Kr/24/4

Office of the R.L.A.

The first question for consideration of the R.L.A., is whether in view of the contentions of the Solicitors at page 273 ante Messrs. Maitland Keyliet & Co. are liable to be prosecuted under section 66(a) of the Indian Stamp Act for failure to make out and execute a duly stamped policy of Fire Insurance within one month after receiving the premium?

2. Section 66(a) of the Indian Stamp Act, 1899, provides that any person who receives or takes credit for any premium or consideration for an contract of insurance and does not within one month after receiving or taking credit for such premium make out and execute a duly stamped policy of such insurance shall be punishable etc. The words underlined clearly show that any person, whether he be an agent or broker of the insurer or the insurer himself, who receives or takes credit for a premium is bound to make out and execute a duly stamped policy of insurance in respect of which the premium is received otherwise he will be liable to punishment under section 66(a). (There is a similar provision in the Stamp Act of 1891, 54 & 55 Vict. c. 39, section 100) see Halsbury's Laws of England Vol. 18 page 477). The main contention of the Solicitors for Messrs. Maitland Kyliet & Co. (at page 273 ante) appears to be that Messrs. Maitland Kyliet & Co., are Lloyd's Agents and not the agents of any of Lloyd underwriters, and that their position is that of a bill collector, they could not be liable under section 66(a) of the

of the Indian Stamp Act. It appears that this contention is not tenable.

3. It is true that Lloyd's Agents are appointed by the corporation and they are not the agents of underwriters; also that the underwriting business of Lloyd's is transacted by the individual members of the society each of whom carries on his business for his own account and risk, either himself or through an authorised underwriting agent, the general practice being for several members in the association but not in partnership, to carry on their business through a single agent who underwrites and acts for the whole group or syndicate (see Arnould on Marine Insurance Vol I, pages 106, 107). It appears from the receipts of premia passed in their own name by Messrs. Maitland Moriot & Co. at pages 17 and 19 of the File that they have described themselves as "Insurance Brokers and Agents" (Insurance at Lloyds) which necessarily means agents of the underwriter or underwriters concerned with the policy, and not Lloyd's agents. Consequently in receiving the premium for the policies Messrs. Maitland Moriot & Co. seem to have acted as brokers and agents for the insurer. Under the Insurance Act of 1938 the position of Messrs. Maitland Moriot & Co. appears to be that of an "Insurer" as defined in section 2(8)(a) and of a representative of Lloyd's underwriters (see section 63 of the Act). Evidently

Messrs. Maitland Moriot & Co. had power to receive premia in India under the authority from the insurer and to pass receipts on roll on water notes for the same in their name as brokers and agents. (See also the certificate alleged to be issued by Messrs. Maitland Co. who style themselves at the top as 'Lloyds' Cover Brokers for India.... " and warrant)

a notice at the bottom as follows:

"This certificate is valid for the full period of Insurance, unless cancelled in writing, and Lloyd's Underwriters assume full liability thereunder."

In the present case they have received the premia and have failed to make out and execute policies within one month, hence prima facie they would be liable to be prosecuted under section 66(c) of the Indian Stamp Act and cannot escape the liability on the plea that they have no authority to execute policies. There is nothing to prevent the insurer to authorise his agent or broker to subscribe a policy for him (see Arnould Vol.1,page 237). Even assuming that Messrs. Maitland Herlot & Co. were authorised to receive the premium but not to subscribe any policy, they were bound to procure a duly stamped policy in time and if they were unable to do so on account of War they should have either refused to receive the premium or should have obtained authority to subscribe policies in respect of which they receive the premia.

5. The second question for consideration is whether Messrs. Maitland Herlot & Co. are liable to prosecution under section 66(b) for delivering the unstamped policy bearing their rubber stamp to the Air Services of India Ltd. The liability to stamp policies has been by virtue of section 66(b) imposed on those who make, execute or deliver them. Consequently Messrs. Maitland Herlot & Co. who delivered a policy which ought duly stamped in the present case are liable to prosecution under section 66(b)

Sd/- 3/9
Superintendent of Legal Affairs.

C.E. to D.D., No. 7809 dated the 6th September 1941

Sr/24/4

No. 7879

Office of the
Remembrancer of Legal Affairs,
Bombay Castle,, 9th September 1941

From
P.M. Moos, Esquire, Barrister-at-Law, I.C.S.
Remembrancer of Legal Affairs

To,
The Superintendent of Stamps,
BOMBAY

Re: Estate of the late Bai Dinbai
Dorabji Vachha.
.....

Sir-

With reference to your letter No. 8485/a, dated the 18th August 1941, on the above subject, I have the honour to state as under:

2. The two deeds forwarded with your letter under reference relate to the transfer by the executor of the estate of deceased Bai Dinbai of certain shares of the Tata Iron and Steel Company, Limited and of the Central India Spinning and Weaving Company, forming part of that estate, to Bai Tehmina in part satisfaction of the legacy of Rs.10,000 provided in her favour under the will of the deceased. The position of the executor is that of a trustee and not of a debtor (see the definition of the term "trustee" in section 3 of the Indian Trusts Act, 1882 and pages 1096-97 of Sen Gupta's Indian Succession Act). The transfer of shares to the legatee in the present case will therefore be a "transfer of trust property from a trustee to beneficiary" within the meaning of Article 62(e) of Schedule I to the Indian Stamp Act The documents will therefore be liable to a stamp duty under clause (e) and not clause (a) of Article 62. The view taken by you in your letter referred to above does not appear to be correct.

Ur/24/4

3. The documents received with your letter under reference are returned herewith.

I have the honour to be,

Sir.

Your most obedient servant

Sd/- 1/0

Remembrancer of Legal Affairs.

Mr/24/4

No. 8562 95

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 1st October 1941

From

P.N. Moos, Esquire, Bar-at-Law I.C.S.,

Remembrancer of Legal Affairs.

To,

The Superintendent of Stamps,

BOMBAY

Subject:- Conveyance of property at Tara Temple Lane
The Official Assignee of Bombay
To
K.N.Shertukde.

Sir,

With reference to your letter No. 5617/S dated the 22nd August 1941, on the above subject, I have the honour to observe as follows:-

One Purshotum Shamji Ambowalla mortgaged his immoveable property to the trustees of the trust fund of the Pranami Khijda Mandir at Jamnagar to secure the repayment of the loan of Rs.25,000/- and created a further charge thereon in their favour to secure the repayment of an additional loan of Rs.7,000/-. The Mortgagor was subsequently adjudged insolvent and all his estates and effects became vested in the Official Assignee. The confirming parties (Mortgagees) entered into possession of the insolvent's property. The Official Assignee was authorised by the Insolvency Court to sell under rules 18,19 and 20 of the Second Schedule to the Presidency Towns Insolvency Act, 1909, the right, title and interest of the insolvent and the confirming parties as the Mortgagees in the said premises. At the auction sale the confirming parties were declared purchasers for Rs.24,500/-.

Thereafter the confirming parties agreed to sell the said property to one K.H. Shortukde and requested the official Assignee to execute a Conveyance in favour of the sub-purchaser. The Official Assignee thereupon executed a document in the name of the sub-purchaser. The question referred for consideration is whether ~~the~~ document in question is liable to advelorem duty under section 28(3) of the Indian Stamp Act, 1899, or whether it is exempt from stamp duty under section 115 or Presidency Towns Insolvency Act, 1909.

2. Section 28(3) of the Indian Stamp Act, 1899, provides that where a person, having contracted for the purchase of any property but not having obtained a conveyance conveys immediately to the sub-purchaser the conveyance shall be chargeable with ad valoren duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser. Ordinarily, therefore, the document under reference would have been liable to an ad volrem stamp duty on Rs.22,000/- for which the original purchase a had agreed to sell the property to the sub-purchaser. But under section 115 of the Presidency Towns Insolvency Act, 1909, every transfer, mortgage, assignment, bond, instrument or writing whatsoever before or under any order of the court is exempt from payment of any stamp or other duty whatsoever. The document under reference was required to be executed by the Official Assignee in favour of the sub-purchaser, Shortukde, at the instance of the original purchaser (the Mortgagee) in insolvency proceedings. The sale of the mortgage property was effected with the consent of the Mortgagee under rules 18,19 and 20 of the Second Schedule to the Presidency Towns Insolvency Act. It ~~thereby~~ was sale under an order of the court within the meaning of section 115(2) of the Presidency Towns Insolvency Act. It did not cease to be a sale under an order of the court merely

because the document was executed in favour of a sub-purchaser at the instance of the original purchaser. In Rahimtulla Vs. The Official Assignee of Bombay (37 B.L.R.449), it has been held that a purchaser from the Official Assignee of the right, title and interest of an insolvent in immoveable property has ordinarily a right to demand from the official Assignee a conveyance of the property either in his own name or in the name of his nominee to whom he has meanwhile sold the property. The present document clearly comes with in the scope of section 115 of the Presidency Towns Insolvency Act and is therefore exempt from stamp duty. The Advocate General's opinion No. 18 dated 4th April 1932 quoted by you in your letter under reference has no application to the present case.

3. The document received with your letter is returned herewith.

I have the honour to be,

Sir,

Youre most obedient servant,,

Sd/- 27/9

Encumbrancer of Legal Affairs.

Ur/24/4

Office of the R.L.A.

Any note, memorandum or writing acknowledging receipt of payment made by one local body to another in satisfaction of its liability would be a "receipt" as defined in section 2(23) of the Indian Stamp Act, 1899, irrespective of the question whether such payment is made directly or indirectly through the agency of Government treasury. If such receipt is for an amount exceeding Rs. 20/- it would be liable to stamp duty under Article 53 in Schedule I to the Indian Stamp Act. The view taken by the Examiner, Local Fund Accounts in his letter at page 10 ante is correct.

Sd/-
29/9

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8632 , dated 3rd October 1941

Mr/24/4

The fact that the consideration, namely, the payment of Premium, is a monetary consideration, constitutes one of the distinguishing features between guarantee or fidelity insurance and an ordinary tripartite contract of guarantee; for in the latter case the gurantor or surety does not receive any monetary consideration for undertaking the risk. There are other distinguishing features in the legal relationships thus created. The guarantor under an ordinar contract of guarantee becomes surety for the debt. An insurer under a fidelity policy does not. He is, in fact, not strictness a surety at all (Dane V Mortgage Insurance Corporation, 1894, I.Q.B. 54,C.A., per Lord Esher M.R. at p. 60) That he contracts to do is to indemnify his assured against losses arising in agreed circumstances and under agreed conditions. These obligations, though there may be an express monetary limit upon them, cannot be defined in terms of money until some event contemplated by the policy shall have occurred and loss have resulted (Finley v Mexican Investment Corporation, 1897,1,A.D.517,522; Liverpool Mortgage Insurance Co's case 1914, 2 Ch. 617 630). Moreover, whereas in a simple contract of g uarantee the surety has a direct right of action against the debtor whose debt he has paid, an insurer under a guarantee policy has no such right. He may, of course, succeed to some extent in recouping himself for that he has paid out; but for that purpose he must be so circumstanced as to be able to avail himself of the doctrine of subrogation. He has no right of action against the debtor (see Barnell's Law of Insurance in British India, pp.357,358). A fidelity guarantee policy is a policy of insurance within the meaning of section 2(10)(a) of the Indian Stamp Act, 1899, and is liable to stamp duty under

Article 47-D in Schedule I thereto. A security bond falling under Article 57 is an ordinary guarantee bond. The instrument in the present case is a fidelity guarantee policy and not an ordinary security bond. Consequently it would be liable to a stamp duty under Article 47-D and no exemption from payment of stamp duty under exception (a) to Article 57 can be claimed. The view taken by G.D. at p. 101 is not correct.

Sd/-
Remembrancer of Legal Affairs.

U.R. to G.D. No. 9666 dated 10/11/1941

Ur/24/4

No. 9847

Office of the
Remembrancer of Legal Affairs
Bombay Castle, 19th November 1941

From

P.M. Meek, Esquire, Barrister-at-Law, I.C.S.,

Remembrancer of Legal Affairs.

To,

The Superintendent of Stamps,
Bombay

Subject:- Adjudication of stamp duty on ..
From XVI (Section 104(2) of the Indian
Companies Act).

Sir,

With reference to the correspondence ending with your letter No. 6982/3 dated the 10th October 1941, on the above subject, I have the honour to observe as follows:-

Clause (b) of sub-section(1) of section 104 of the Indian Companies Act, 1913, provides that in the case of allotment of shares as fully or partly paid up otherwise than in cash, the Company shall produce for the inspection and examination of the Registrar a contract in writing constituting the title ~~fathe~~ of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped. Sub-section (2) provides that when such a contract as abovementioned is not reduced to writing, the Company shall file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract an instrument within the meaning of the Stamp Act. As observed by Rudo J. in Bhola Ram and Sons Ltd. Vs. the Crown (I.L.R. 15 Lah 501 at page 505) the particulars required to be filed with the Registrar under sub-section (2) relate to the contract.

"Constituting the title of the allottee" to the allotment of the shares; and the question arises which is the contract which constitutes the title of the allottees. It is true that in its letter dated 17th July 1941 the Company has stated that the particulars related to the property already acquired by the Company and no sale deed had been executed. But the definition of the expression "conveyance" in section 2(10) of the Stamp Act, 1899, contemplates an actual transfer of property. There is nothing in these particulars to show that they constitute any actual transfer of property or conveyance in favour of the allottees. The Company states further in its letter dated 25th August 1941 that there was an oral understanding between the parties that after the formation of the limited company, the business would be transferred to the new Company in return for the allotment of the said shares. If that is so, the particulars would relate to that or 1 agreement which did not itself effect any transfer in present. The case would therefore be governed by the ruling in 15 Lahore referred to above. The view taken by you is correct (See also the Full Bench Case reported in 1937 L.L.J. at pp 108)

2. The papers received from you are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-
18/11

Secretary to Legal Affairs.

Hr/24/4

3.) The document is in my opinion

(a) Dissolution of Partnership of 3 Firms)

(b) Agreement to divide moveable and —

immoveable properties including the surplus Kano amounting to

artition) (Pl see Sec2(15) of the Stamp Act.

(c) Agreement for settlement of immoveable

Pr.party at Kurna amounting to a settlement.)

(Pl see Sec 2(24) of the Stamp Act)

The parties are co,owners being partners & they agree to —

divide the property mentioned in (b) above to settle the pety in (c)

In order to assess the proper amount of duty chargeable on the document, the Solicitors were asked to st te in the document the value of the moveable and immoveable— properties, but they have up-to now omitted to do so. I— intend t proceed against the parties in accordance with — the provisions of Section 27 and 64, but before I do so, I — shall be obliged if you will inform me whether my above view is correct.

I have the honour to be,
Sir,

Your most obedient servant,

Sd/-

For Superintendent of Stamps.

Ur/2●/4

From

The Superintendent of Stamps,
BOMBAY

To,

The Remembrancer of Legal Affairs,
BOMBAY

General Stamp Office,
Bombay, 13 Nov. 1941

Re: Deeds of Dissolution of Partnership in Gujarathi Character.

.....

Sir,

I have the honour to forwarded herewith a Gujrati--- document together with its Ebglish translation received by me for denoting a certificate on its duplicate under Section 16 of the Indian Stamp Act that the proper duty on the original has been paid.

2. The document records as un er:-

Messrs. Dawood Haji Nassur, Mahomed Jaffer Haji -- Nassur and Yusufalli Haji Nassur were carrying on business under the names o..

(1) Messrs. Nassur Haji Mowji and Co. in Bombay

(2) Messrs. Dawood Haji Nassur Brother Co. in Africa
and
(3) Messrs. M Jaffer and Co. in Japan,

and they have decided to dissolve the said partnership firms and to do separate bisiness. The old names to be continued for the purpose of settling the outstanding affairs in which Messrs. Dawood Haji Nassir and Co. and Messrs. Mahomed Jaffer Nassur and Co. each have eight anna share. In clause II it has been provided that they shall have 8 anna share in all surplus of yens th t may remain in the name ofMessrs M. Jaffer and Co. in Japan. By clause 12 it has been agreed- that the immoveable properties standing in the names of the above firms may be divided in proportion given therein and a trust shall be created of the charitable property at Kurla- standing in the name of Mr. Mahomed Jaffer Haji Nassur.

No. 10962

Office of the
Remembrancer of Legal Affairs,
Bombay Castle 19th December 1941

From

P.H. Ross, Esquire, Bar-at-law, I.C.S.,
Remembrancer of Legal Affairs;

To,

The Superintendent of Stamps,
BOMBAY.

Subject:- Deeds of dissolution of partnership.

Sir,

With reference to your letter No 7747/3, dated the 13th November 1941, on the above subject, I have the honour to state that I agree with the opinion expressed by you in paragraph 3 of the letter.

2. The documents in Gujrati and the English translation forwarded by you are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-
18/12

Remembrancer of Legal Affairs.

Rr/24/4

Office of t.e R.L.A.

STATEMENT OF THE CASE.

This is in connection with the levy of stamp duty on a deed of conveyance by the Municipal Corporation of the City of Bombay in favour of the Official Trustee of Madras as trustee of the Policy Holders Trust Fund of the United India Life Assurance Co. Ltd. of Madras. The document has been first signed on behalf of the Corporation in Bombay, then on behalf of the Assurance Company in Madras and lastly again in Bombay. The property conveyed is situated in Bombay. The instrument was stamped in Madras before it was signed onbehalf of the United India Life Assurance Company in Madras. When the document was presented for Registration in Bombay, the Sub-Registrar felt doubtful whether the document was properly stamped. The Company therefore forwarded the same to the Superintendent of Stamps for adjudication. Adjudication was time-barred. The Superintendent of Stamps however informed the Company that as the document had been executed in Bombay it should have been stamped with stamps issued by the Government of Bombay as required by section 3 of the Indian Stamp Act, 1899, read with rule 3(1) of the Bombay Stamp Rules, 1939. As the document was

stamped with stamps issued by the Madras Government, the Superintendent therefore called the Company to pay fresh duty, on payment of which the instrument could be certified under rule 20 of the Bombay Stamp Rules 1933. Fresh stamp duty was then paid by the Company to the Superintendent of Stamps, Bombay: and the Company has now approached the Government of Madras for refund of the duty of Rs.12,478/- first paid in Madras. The Madras Government does not agree with the Superintendent of Stamps, Bombay, that the instrument had become chargeable in Bombay; and considers that it was properly stamped in Madras. The Madras Government therefore requests the Government to refund the stamp duty of Rs.12,478/- recovered from the United India Life Assurance Company by the Superintendent of Stamps, Bombay.

2. The contention of the Madras Government is that the instrument was properly stamped in Madras in accordance with the provisions of section 17 of the Stamp Act, and that the case can, at the most, fall within the provisions of section 12-A of the Act.

3. In the case of a similar instrument between the Tata Iron and Steel Company Ltd.,

and one Mangilall Rehgta and other, which was executed on behalf of the Company in Bombay but which required to be executed on behalf of the other party at Jamshedpur, the Superintendent of Stamps, on the advice of the A.G.A. in his his opinion No2117 dated 10-3-41 following the previous opinion No.695 dated 10-1-30 held that the document had not become chargeable to stamp duty. The Tata Iron and Steel Company have obtained the opinion of Sir Jamshed Kanga in that connection which is at pages 33-39 ante. According to Sir Jamshed Kanga a document prepared and stamped outside the Province of Bombay and executed by one of the parties outside Bombay and by the other party in Bombay would not require further stamp duty unless the case fall within section 18-A of the Act.

4. In para. 7 of his opinion No 695 dated 10-1-30, the A.G.A. (Mr. Dhurandhar) has observed that though section 2(12) of the Indian Stamp Act, 1899, defines the expressions 'executed' and 'execution' with reference to instruments as meaning 'signed' and 'signature', it does not mean that the definition materially alters the meaning ordinarily attached to the expressions. The ordinary meaning of the expression 'executed' has reference to the last act or series of

acts which completes a document (I.L.R. 19 Bom 635). The R.L.A. held therefore that until all the parties to a documenthad put their signatures to a document, it could not be said that the execution of the document was complete or that the document had been executed. The signing of a document by one of the parties does not amount to the execution thereof.

5. The document under consideration in the present case was finally executed in Bombay by the Municipal Commissioner of Bombay. The property which is the object matter of the conveyance is situated in Bombay. On further consideration, However, the R.L.A. is inclined to the view that the contention of the Madras Government is not without force. In his opinion No 685 dated 10-1-39, the R.L.A. (Mr. Dhurandhar) held that the ordinary meaning of the expression 'executed has reference to the last act or series of acts which completes a document, and that therefore a document cannot be deemed to be executed until it is signed by all the parties. This opinion was followed in the subsequent opinions, No 4615 dated 25-4-39, No 6880 dated 4-7-39 and No 2147 dated 10-2-41 But what seems to be an unfortunate circumstance is that

the original opinion was based on a ruling of the year 1894(I.L.R.19Bom.635) which has been rendered obsolete by reason of the term 'executed' being subsequently defined in section 2(12) of the Stamp Act of 1899, and given a meaning somewhat different from its legal sense. In view of this specific definition of 'executed' incorporated in the Stamp Act of 1899 and of the further provision that stamp duty has to be levied before or at the time of execution of an instrument, the R.L.A's opinion No. 695 dated 19-1-39 would appear to be of doubtful validity.

As the question is important and a large amount of stamp duty is involved, the Advocate General is kindly requested to express his opinion in the matter.

Sd/-
20/11

Remembrancer of Legal Affairs.

U.R. to the Adv. General, No 10022
dated 21st November 194.

Mr/24/4

document which is stated to have been made on the 12th October 1940 was/as appears from a letter addressed by the Legal Assistant to the Bombay Municipality to the Sub Registrar (page 5), executed by the Confirming Party at Madras on the 21st of August 1940. At or before the date of its execution by the Confirming Party at Madras adhesive stamps of the value of Rs. 12,478/- had been affixed to the document. The document was subsequently executed by the Corporation at Bombay on the 12th of October 1940. It was thereafter presented to the Sub Registrar in Bombay for registration. The Sub Registrar, having doubts whether the document was duly stamped, sent it to the Stamp Officer for certification. The Superintendent of Stamps, Bombay took the view that as the document had been finally executed in Bombay and as it was not stamped with stamps issued by the Government of Bombay, it was not duly stamped and was liable to be impounded. Thereafter a fresh stamp duty in the sum if Rs. 12,478/- was paid in Bombay and under Rule 20 of the Bombay Stamp Rules, the document was certified to have been duly stamped.

2. The Confirming Party thereupon applied to the Superintendent of Stamps, Madras, for a refund of the sum of Rs. 12,478/- being the value of the adhesive stamps issued by his office at Madras on the 19th of August 1940, contending that the stamp duty on the document had been levied in Bombay. The Government of Madras have now addressed a letter to the Government of Bombay requesting them to arrange for the refund of the stamp duty collected in Bombay from the Confirming ~~Party~~ Party.

3. The question for determination is whether the view of the Superintendent of Stamps, Bombay, that the document was not duly stamped by reason of it not bearing stamps issued by the Government of Bombay is correct.

4. Section 3 of the Stamp Act, which is the charging section, provides that every instrument mentioned in the schedule

—3 chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Bombay on or after a certain date, shall be chargeable with duty of the amount indicated ~~xxxx~~ in the schedule. The chargeability/duty of the amount indicate to ~~xxxxxxxx~~ case of an instrument wich has not been previously executed by any person and which is executed in Bombay. Section 17 of the Act provides the time of stamping documents. Under that section all instruments chargeable with duty have to be stamped before or at the time of execution. Regarding sections 3 and 17 together, it would seed that the proper time in law for the stamping of an instrument is before or at the time of its first execution.

5. Section 2(6) which defines the word "chargeable" fixes the liability to duty and the amount of the duty to be paid in the case of an instrument executed by several persons at different times with reference to its first execution. Various other sections of the Act also refer to an instrument being "first executed" or its "first execution". See section 32 provisoes (a) and (b) and section 33(2).

6. Section 17 refers to "the time of execution" of an instrument. In the case of an instrument executed by several persons at different times, "the time of/~~xxxxxxx~~ execution" may be the time when it was first executed or the time when it was last executed. It may be contended that in as much as the section speaks of the time of execution of an instrument, the time of execution contemplated by it can only be the last execution of it when the instrument as a whole can be said to be executed. Having regard however to the provisions ~~xxxxx~~ of section 3 and the definition in section 2(6) above mentioned, it appears that the intention of the legislature is to make the instrument chargeable at the moment it is first executed and with the duty payable at that point of time. "The time of execution" in the case of such an instrument must, therefore, I think, mean the time when it

was first executed.

The definition of "execution" in section 2(12) does not seem to be material to the point under determination. That definitio only enacts that the word "execution" means "signature" so that in finding out whether a document is executed or not, one would not be concerned to in ire whether formalities ober than a signature necessary to the completion of the document as a legal and valid document have been gone through. In this manner the definition makes the decision in 19 Bom. 635, obsolete. The definition does not help the determination of the present question, in so much as, each act of signature t the document would, under the definition, be an execution of the document so that a document may be executed within its meaning several times.

8. No dount, in the case in 19 Bom. 635, it has been stated that "execution when applied to a document is the last act or series of acts which completes it " Those observations however have reference to the case of thehundi which was before the Court in that case, and are not, in my opinion, helpful in arriving at the true construction of section 17 of the Act.

9. Having considered the Opinions referred to in para 5 of the Note of the R.L.A., I am of the opinion that the view taken by the Superintendent of Stamps in Bombay in reference to the document in questioni is not correct; and that the view put forwarded in the letter of the Government of Madras dated the18th of August 1941 is the correct view. The document had already been duly stamped at the time of its execution in Bombay and was a duly stamped document when it was presented fro registration to the Sub Registrar in Bombay

Sd/- 1/12/41
Advocate General.

U.R. to R.D. No. 10624, dated 10-12-41
Ex/24/4